

AF/GP3661\$

#29

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Martin Kelly Jones

Serial No.: 08/852,119

Filed: May 6, 1997

For **ADVANCE NOTIFICATION SYSTEM
AND METHOD UTILIZING A
COMPUTER NETWORK**



Examiner: Louis-Jacques, J.

Art Unit: 3661

Docket No: 050711-1026

TRANSMITTAL LETTER FOR APPEAL BRIEF

THE COMMISSIONER OF PATENTS
AND TRADEMARKS
WASHINGTON, D.C.

Sir:

Transmitted herewith is/are the following in the above-identified application:

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| <input checked="" type="checkbox"/> Appeal Brief | <input checked="" type="checkbox"/> Petition to Extend Time |
| <input type="checkbox"/> Letter to PTO | <input type="checkbox"/> Supplemental Declaration |
| <input type="checkbox"/> No Additional Fee Required | <input checked="" type="checkbox"/> Check in the Amount of \$300.00 |
| <input type="checkbox"/> Corrected Drawings | <input type="checkbox"/> Terminal Disclaimer |
- The Commissioner is authorized to charge our Deposit Account No. 20-0778 in the amount of \$_____ to cover the above listed additional fees.
- In the event of non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit our Deposit Account No. 20-0778 as required to correct the error. A duplicate copy of this transmittal is enclosed.

THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.
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Suite 1500
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Respectfully submitted,

Jon E. Holland
Registration No. 41,077

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PATENT

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Serial No.: 08/852,119
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For **ADVANCE NOTE**
AND METHOD U
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APPEAL BRIEF UNDER 37 C.F.R. §1.192

Assistant Commissioner for Patents
Box: AF (Appeal Brief)
Washington, DC 20231

Sir:

This Appeal Brief under 37 C.F.R. §1.192 is submitted in triplicate in support of the Notice of Appeal filed June 9, 1999, responding to the final Office Action of March 9, 1999.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to Deposit Account No. 20-0778.

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REAL PARTY IN INTEREST

The real parties in interest are the assignees, Global Research Systems, Inc. and Buscall Properties, L.L.C.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences that will affect or be affected by a decision in this appeal.

STATUS OF CLAIMS

Claims 1-21 and 23-49 stand finally rejected. No claims have been allowed. The final rejection of claims 1-21 and 23-49 is appealed.

STATUS OF AMENDMENTS

This application was originally filed on May 6, 1997, with claims 1-26. A Preliminary Amendment was filed on March 13, 1998, along with a substitute specification pursuant to 37 C.F.R. §1.125. The foregoing Preliminary Amendment amended claims 14-16, 19-21, and 23-26, canceled claim 22, and added claims 27-30. A second Preliminary Amendment was filed on May 13, 1998. The second Preliminary Amendment added claims 31-49. No amendments to the claims have been made since the second Preliminary Amendment filed on May 13, 1998.

A non-final Office Action was mailed from the U.S. Patent and Trademark Office ("PTO") on September 2, 1998, rejecting claims 1-21 and 23-49. A First Response was filed with the PTO on February 2, 1999. A final Office Action was then mailed from the PTO on March 9, 1999, finally rejected claims 1-21 and 23-49. A Second Response was filed with the PTO on April 6,

1999. An Advisory Action was mailed from the PTO on April 23, 1999, maintaining the final rejection of claims 1-21 and 23-49. A Third Response was filed with the PTO on June 9, 1999, along with a Notice of Appeal. An Advisory Action was mailed from the PTO on June 18, 1999, maintaining the final rejection of claims 1-21 and 23-49. A Fourth Response was filed with the PTO on July 14, 1999, and an Advisory Action was mailed from the PTO on July 27, 1999, maintaining the final rejection of claims 1-21 and 23-49. Finally, a Fifth Response was filed with the PTO on September 7, 1999, and an Advisory Action was mailed from the PTO on September 10, 1999, maintaining the final rejection of claims 1-21 and 23-49. The final rejection of claims 1-21 and 23-49 is appealed.

SUMMARY OF THE INVENTION

In general, the present invention provides a system and method for monitoring travel of vehicles and for notifying users of impending arrivals of the vehicles at particular locations. In this regard, a vehicle control unit located on a vehicle determines the vehicle's location as the vehicle travels and monitors the travel of the vehicle. In one embodiment, the vehicle control unit transmits location signals, indicating the present location of the vehicle, to a base station control unit remotely located from the vehicle, and the base station control unit monitors the travel of the vehicle based on the location signals transmitted by the vehicle control unit. When the vehicle comes within a predefined proximity of a particular location, such as a user's house or a bus stop, for example, the base station control unit or the vehicle control unit contacts the user to notify the user of an impending arrival of the vehicle at the particular location.

ISSUES

The following issues need to be decided as part of this appeal:

1. Whether U.S. Patents 5,444,444 and 5,648,770 to *Ross* should be removed as prior art references to claims 1-21 and 23-49 pursuant to 37 C.F.R. §1.132.
2. Whether U.S. Patents 5,444,444 and 5,648,770 to *Ross* should be removed as prior art references to claims 1-21 and 23-49 pursuant to 37 C.F.R. §1.131.
3. Whether claims 15-21, 23-26, 19, and 30 are patentable over U.S. Patents 5,444,444 and 5,648,770 to *Ross*.

GROUPING OF CLAIMS

With respect to claims 1-21 and 23-49, the claims of the group do not stand or fall together; but rather:

1. claims 1-21 and 23-49 stand or fall as a group (group 1) with respect to the rejections over the 5,444,444 and 5,648,770 patents to *Ross* for at least the reason that the *Ross* patents are not valid prior art references under 37 C.F.R. §1.131 and/or §1.132; and
2. claims 15-21, 23-26, 29, and 30 stand or fall as a group (group 2) with respect to the rejections over the 5,444,444 and 5,648,770 patents to *Ross* for at least the reason that the *Ross* patents fail to disclose and/or teach each of the elements of these claims.

THE ARGUMENT

1. Group 1

“(T)he fact that an application has named a different inventive entity than a patent does not necessarily make that patent prior art.” *Applied Materials Inc. v. Gemini Research Corp.*, 15 U.S.P.Q.2d 1816, 1818 (Fed. Cir. 1988). “(A)n applicant’s own work, even though publicly disclosed prior to his application, may not be used against him as a reference, absent the existence of a time bar to his application.” *In re DeBaun*, 214 U.S.P.Q. 933, 935 (C.C.P.A. 1982). Therefore, an applicant may overcome a rejection based on a patent “by showing that the patent disclosure is a description of applicant’s own previous work. Such a showing can be made by proving that the patentee was associated with applicant (e.g. worked for the same company) and learned of applicant’s invention from applicant.” M.P.E.P. §2136.05; see also *In re Mathews*, 161 U.S.P.Q. 276 (C.C.P.A. 1969).

Furthermore, an applicant may overcome a prior art reference that is prior art under 35 U.S.C. §102(a) or 102(e) by establishing “conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application.” 37 C.F.R. §1.131.

a. Claims 1-21 and 23-49

Claims 1-14, 27, 28, 31-35, 37-41, 43-47, and 49 presently stand finally rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,444,444 (“the ‘444 patent”) to *Ross* and as allegedly being anticipated by U.S. Patent No. 5,648,770 (“the ‘770 patent”) to *Ross*. Furthermore, claims 15-21, 23-26, 29, and 30 presently stand finally rejected as allegedly being anticipated by the ‘444 and the ‘770 patents, and claims 36, 42, and 48 presently stand finally

rejected under 35 U.S.C. §103 as purportedly being unpatentable over the '770 patent and, in the alternative, the '444 patent. However, Applicant submits that the subject matter disclosed by the '444 and the '770 patents and used by the Patent Office to reject pending claims 1-21 and 23-49 is the product of Applicant's own previous work, and the '444 and the '770 patents, therefore, should not be used to reject the aforementioned claims.

In particular, Applicant asserts in a Declaration under 37 C.F.R. §1.132 by M. Kelly Jones submitted along with the First Response on February 2, 1999, that Applicant invented the subject matter relied on to reject the pending claims of the present application and that Applicant disclosed the subject matter to Mr. John Ross in efforts of obtaining financing for Applicant's invention. It is Applicant's belief that Mr. Ross had no conception of an advance notification system prior to the Applicant's disclosure to Mr. Ross. Once Applicant disclosed the advance notification system to Mr. Ross, Mr. Ross did suggest the use of a card reader system to implement on the vehicles of the advance notification system (see paragraph 4 of the aforementioned Declaration by M. Kelly Jones), but Mr. Ross had no further technical input. After Mr. Ross failed to obtain financing, the Applicant and Mr. Ross parted company, and Mr. Ross later filed patent applications (that later issued as the '444 and the '770 patents) including the subject matter invented by the Applicant and disclosed to Mr. Ross.

Other exhibits previously submitted to the PTO tend to show that Applicant's assertions in the aforementioned Declaration by M. Kelly Jones are truthful and accurate. In this regard, Exhibit B submitted along with the First Response on February 2, 1999, shows that a relationship between the Applicant and Mr. Ross existed prior to the effective filing date of the patents granted to Mr. Ross. Furthermore, Exhibit A submitted along with the Third Response filed on June 9, 1999, shows that the relationship between Applicant and Mr. Ross was terminated, as claimed by the

Applicant in paragraph 3 of the aforementioned Declaration by M. Kelly Jones, once Mr. Ross failed to raise sufficient funds. Exhibit A submitted along with the First Response on February 2, 1999, shows that Mr. Ross at least conceded that the Applicant is an inventor of the advance notification system by signing a non-disclosure agreement that listed Applicant as an "inventor" (see also paragraph 5 of the aforementioned Declaration by M. Kelly Jones). Note that Mr. Ross is not listed as an inventor on the non-disclosure agreement. Exhibits B-F submitted along with the Third Response filed on June 9, 1999, show that third parties met with Applicant and Mr. Ross and discussed the advance notification system. Each of these third parties believed that Applicant, and not Mr. Ross, was the inventor of the product being discussed.

In particular, Mr. Mark Stubbins stated that he and the Applicant "met with Mr. Ross for the sole purpose of having him help us raise money ... Mr. Ross's only involvement was his 'finding capital' for starting a company to exploit the technology. He had no substantive input on the ideas or concepts associated with the advance notification system. The advance notification system was conceived of and its design was well defined in both system implementations, *long before Mr. Ross was involved.*" (Emphasis added). See paragraph 12 of Exhibit B submitted with the Third Response. Furthermore, Mr. Stubbins reviewed claims of the '444 and '770 patents to Mr. Ross and stated that the apparatus described by these claims was invented by Applicant and disclosed to Mr. Ross "before Ross thought about or knew anything about this 'apparatus.'" (See paragraphs 17 and 18 of the foregoing Exhibit).

Ms. Gena Payne also reviewed the same claims of the '444 and '770 patents and asserted that the subject matter of the claims was disclosed to her by Applicant and that "Ross made no claim to have invented (the apparatus), in whole or in part." See paragraphs 5 and 6 of Exhibit C of the Third Response. In fact, Ms. Payne stated that "it is beyond amazing that John Ross can

actually claim that he is the inventor of any technology surrounding the advance notification field.”

See paragraph 5 of the foregoing Exhibit. Furthermore, Ms. Payne (as well as Mr. Anthony Hunt) also stated that Mr. Ross *admitted* to them that the advance notification system was Applicant's idea and that Mr. Ross was helping to raise money. (See paragraphs 3 and 4 of Exhibit C submitted with the Third Response and paragraph 12 of Exhibit D submitted with the Third Response).

Furthermore, Mr. Rusty Gordon, once a vice president at GTE, also met with Applicant and Mr. Ross regarding the advance notification system. Mr. Gordon stated that he understood Applicant to be the inventor and Mr. Ross to be a financial advisor at the meeting. (See paragraph 8 of Exhibit E submitted with the Third Response). Mr. Gordon also reviewed the same claims reviewed by Mr. Stubbins and Ms. Payne and stated that he discussed all of the elements of the claims “before Kelly (Applicant) met John Ross.” See paragraphs 9 and 10 of the foregoing Exhibit.

Accordingly, Applicant respectfully asserts that the exhibits submitted with the First Response and the Third Response sufficiently prove that Applicant, not Ross, invented the subject matter which is disclosed by the '444 and the '770 patents and which is relied upon to reject the pending claims of the present application and that Mr. Ross derived this subject matter from Applicant. For the reasons set forth hereinbefore, the '444 and the '770 patents are not proper prior art references.

b. Response to Arguments by PTO

In asserting that the '444 and the '770 patents are not valid prior art references, Applicant relies in part upon *In re De Baun*, which states that “an applicant's own work, even though publicly disclosed prior to his application, may not be used against him as a reference, absent the existence

of a time bar.” 214 U.S.P.Q. at 935. However, in the final Office Action mailed on March 9, 1999, it is asserted by the Patent Office that the law set forth in *In re DeBaun* “only applies to the same applicant for the patent and the application.” Applicant respectfully traverses this interpretation of *In re De Baun* by the Patent Office.

In the case of *In re Mathews*, Dewey filed a patent application for a time delay protective device for an electronic circuit. 161 U.S.P.Q. 276 (C.C.P.A. 1969). The patent application (which issued as U.S. Patent No. 3,105,920) included unclaimed subject matter derived from Mathews, who was a co-worker of Dewey. Later, Mathews filed a patent application pertaining to the unclaimed subject matter disclosed in the earlier filed Dewey patent. The Court found that the Dewey patent included a “full disclosure of the invention now claimed by Mathews.” *Id.* at 277.

Since the subject matter derived by Mathews was not claimed in the Dewey patent, Mathews was not named as an inventor in the Dewey patent. However, the Court held that the Dewey patent could not be applied as a prior art reference against the Mathews application, “since Dewey derived his knowledge (of the relevant subject matter) from Mathews.” *Id.* at 278. Therefore, the Dewey patent was not considered to be a prior art reference to the Mathews patent application even though: (a) the Dewey patent was filed before the effective filing date of the Mathews patent application, and (b) Mathews was *not* an inventor in the Dewey patent (*i.e.*, the Dewey patent and the Mathews patent application properly named different inventive entities). Accordingly, there is no requirement that an applicant must establish that he is a named inventor of a prior patent to remove the patent as a prior art reference via an affidavit/declaration under 37 C.F.R. §1.132.

In fact, M.P.E.P. §2136.05 states that “(w)hen a prior U.S. patent is not a statutory bar, a 35 U.S.C. 102(e) rejection can be overcome by antedating the filing date of the U.S. patent under 37

C.F.R. §1.131 or by submitting an affidavit or declaration under 37 C.F.R. §1.132 establishing that the relevant disclosure is applicant's own work." (Emphasis added). There is no requirement in M.P.E.P. §2136.05 for the applicant to be named as an inventor in the prior U.S. patent.

Furthermore, the Court of Customs and Patent Appeals has stated in the case of *In re Land and Rogers* that:

there are two conditions expressed in section 102(e): (1) the application for the reference patent must have been by one who is legally "another" and (2) the filing date must be "before the invention * * * by the applicant * * *." When the 102(e) reference patentee got knowledge of the applicant's invention from him, as by being associated with him, * * * and *thereafter* describes it, he necessarily files the application *after* the applicant's invention date and the patent as a "reference" does not evidence that the invention, when made, was already known to others. (Footnote omitted.) Evidence of such a state of facts, whatever its form, must be considered. 151 U.S.P.Q. 621, 633 (1966); see, also, *Mathews* at 279.

Noting that there is no mention of a requirement in *Land* for an applicant to be named as an inventor in a prior patent to overcome the prior patent as a reference, Applicant submits that the aforementioned interpretation of *In re De Baun* by the Patent Office incorrectly focuses on the "by another" requirement of 35 U.S.C. §102(e) instead of the "before the invention" requirement. In focusing on the "before the invention" requirement, the "proper subject of inquiry" is "who invented the subject matter disclosed by (the reference) which was relied on to support the rejection." *Id.* at 633 n. 11; see, also, *DeBaun* at 935. In other words, the proper inquiry is not who first disclosed the subject matter but rather who invented the subject matter. Consequently, to overcome a prior art reference under 35 U.S.C. §102(e), all that needs to be shown (in the absence of a time bar) is that the subject matter relied on by the Patent Office to reject the applicant's patent application was derived from the applicant, and there is no requirement that an applicant be a named inventor of the prior art reference.

c. **Invention Completed Prior to the Ross patents**

Furthermore, as a separate grounds for removing the '444 and the '770 patents as prior art references, Applicant submits that the present invention, as defined by claims 1-21 and 23-49, was completed in this country prior to the effective filing date of the '770 and '444 patents, in that the invention was conceived of prior to the effective filing date of the '770 and '444 patents and due diligence existed from prior to the effective filing date of the '770 and '444 patents to the effective filing date of the present invention. Therefore, pursuant to 37 C.F.R. §1.131, the '444 and the '770 patents should be removed as prior art references.

In this regard, Applicant submits that the present application claims priority to U.S. Patent No. 5,400,020 and that the present invention, as defined by claims 1-21 and 23-49, is supported by the 5,400,020 patent. Therefore, Applicant asserts that the effective filing date of the '770 and '444 patents is May 14, 1993, and the effective filing date of the present invention, as claimed, is May 18, 1993, only *four days* after the effective filing date of the '770 and '444 patents.

Furthermore, Applicant submits that Exhibits A, B, and E-G submitted along with the Fourth Response on July 14, 1999, show that the present invention, as defined in claims 1-21 and 23-49, was conceived of prior to May 14, 1993. Note, in particular, that it is asserted in paragraph 3 of Exhibit B that "(e)ach redacted portion of the Exhibits E-G corresponds to a date prior to May 14, 1993." Also note that Exhibits E-G of the Fourth Response are copies of Exhibits C-E of the Third Response.

In addition, Exhibits A-D submitted with the Fourth Response show that due diligence existed from prior to May 14, 1993, to May 18, 1993. Specifically, Exhibits A-D submitted along with the Fourth Response on July 14, 1999, show that the Applicant and/or Applicant's attorney worked on the preparation of the patent application (that later issued as U.S. Patent No. 5,400,020)

from at least May 10, 1993, to May 18, 1993, the effective filing date of the present application. See *Bey v. Kollonitsch*, 231 U.S.P.Q. 967, 969 (Fed. Cir. 1986) ("Clearly, reasonable diligence can be shown if it is established that the attorney worked reasonably hard on the particular application in question during the continuous critical period."). In this regard, the following events occurred between May 10, 1993, and May 18, 1993, showing continuous diligence on the part of the Applicant during this time period:

on May 10, 1993, attorney Scott Horstemeyer, on behalf of Applicant, revised the claims of the aforementioned patent application and met with the Applicant and co-inventors (regarding parent application that issued as U.S. Patent No. 5,400,020) for about 2.5 hours;

on May 11, 1993, the attorney spent about 5.1 hours revising the aforementioned patent application, preparing the formality documents (*i.e.*, Combined Declaration and Power of Attorney, Small Entity Statement, and Assignment), and drafting a letter to the inventors forwarding the final version of the application and the formality documents for their review and signature;

on May 12, 1993, the attorney reviewed and sent the letter to the inventor via U.S. mail, a copy of which has been submitted as Exhibit D of the Fourth Response, along with the final version of the aforementioned patent application and formality documents (*i.e.*, Combined Declaration and Power of Attorney, Small Entity Statement, and Assignment) that needed to be signed by the inventors;

between May 13, 1993, and May 15, 1993, the Applicant received and reviewed for accuracy the final version of the application and the formality documents, signed the formality documents (and had the Assignment notarized), and mailed the application and the formality documents back to the attorney;

May 15, 1993 was a Saturday, and May 16, 1993, was a Sunday (no mail on this day); and

on May 17, 1993, the attorney received the application and formality documents from the inventors, had a conversation with the draftsman regarding the formal drawings, reviewed these documents, prepared the application transmittal cover sheet and return post card for the application and formality documents, and filed the application and related documents; the attorney billed about .6 hours for the aforementioned services.

Accordingly, Applicant submits that conception of the present invention prior to the effective filing date of the '444 and '770 patents is established and that continuous due diligence is established for the time period from at least May 10, 1993, to the effective filing date of the present invention. As a result, the '770 and '444 patents are not proper prior art references under 35 U.S.C. §102(a) or 102(e), and Applicant, therefore, respectfully submits that the rejections to the foregoing claims should be withdrawn.

d. **Response to Arguments by the PTO**

In the Advisory Action mailed on July 27, 1999, it is asserted by the Patent Office that the '444 and the '770 patents should not be removed as prior art references pursuant to 37 C.F.R. §1.131, because Applicant allegedly failed to submit "original exhibits of drawings or record, or photocopies thereof" or to "satisfactorily" explain their absence as required by 37 C.F.R. §1.131(b).

In this regard, 37 C.F.R. §1.131(b) requires that:

(t)he showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or the filing of the application. Original exhibits of drawings *or records*, or photocopies thereof, must accompany and form part of the affidavit or declaration of their absence satisfactorily explained. (Emphasis added.)

Applicant submits that the aforementioned requirement of 37 C.F.R. §1.131(b) to submit “exhibits of drawings or records, or photocopies thereof” has been satisfied by the Applicant, as the Applicant has submitted a “record” showing that Applicant’s attorney worked on Applicant’s patent application prior to the effective filing dates of the ‘444 and the ‘770 patents to the filing date of the present application. See Exhibit C of the Fourth Response. Therefore, the literal language of the foregoing §1.131(b) requirement to submit “exhibits of drawings or records, or photocopies thereof” has been satisfied, and the crucial issue should be whether the “showing of facts” proffered by the Applicant is sufficient to establish conception “coupled with due diligence,” as required by 37 C.F.R. §1.131(b).

For the reasons previously set forth hereinabove, Applicant submits that Exhibits A-G of the Fourth Response are sufficient to show that Applicant conceived of the present invention prior to the effective filing date of the ‘444 and ‘770 patents and that Applicant or Applicant’s attorney was duly diligent in preparing and filing an application on the present invention between at least May 10, 1993, and May 18, 1993. Therefore, Applicant submits that the present invention, as defined by claims 1-21 and 23-49, was completed in this country prior to the effective filing date of the ‘444 and the ‘770 patents and, therefore, that the ‘444 and the ‘770 patents should not be used to reject the present application.

2. Group 2

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983). Furthermore, in order for a claim to be properly rejected under 35 U.S.C. §103, the combined teachings of the prior art references must suggest all

features of the claimed invention to one of ordinary skill in the art. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. **Claims 15-21, 23-26, 29, and 30**

Claims 15-21, 23-26, 29, and 30 presently stand rejected by the PTO as allegedly being anticipated by the '444 and '770 patents, as indicated by the Advisory Action mailed on September 10, 1999. However, claim 15 and, therefore, claims 16-21, 23-26, 29, and 30, which depend from claim 15, include the following features:

- (a) a computer associated with said user, said computer for producing a message at said computer for said user indicative of said impending arrival of said vehicle at said particular location before said vehicle reaches said particular location ...
- (c) a base station control unit having ... a base station computer controlling said receiver, ***said base station computer for establishing a connection between said base station computer and said user computer and communicating said travel data.*** (Emphasis added).

Applicant submits that the '444 and the '770 patents fail to disclose and/or suggest at least the features highlighted hereinabove and that the '444 and '770 patents are inadequate to reject pending claims 15-21, 23-26, 29, and 30 under 35 U.S.C. §102 and/or §103.

In this regard, the '444 and '770 patents teach that the travel of a vehicle should be monitored by a controller located on the vehicle. When the vehicle is within a predetermined time from a delivery location, the controller initiates a call to a selected recipient to warn the selected recipient of the impending arrival of the vehicle. See col. 4, line 59, through col. 5, line 6, of the '444 patent, and col. 4, lines 53-67, of the '770 patent. However, the call is initiated by the vehicle controller via a cellular communication apparatus, which is located on the vehicle and calls the

selected recipient directly via a cellular network. See col. 3, lines 56-60, of the '444 patent and col. 3, lines 53-57, of the '770 patent. There is no suggestion that the controller should transmit a location signal to a base station control unit "for establishing a connection between said base station computer and said user computer and communicating said travel data."

Since the present invention utilizes a "base station computer" to establish a communication connection with the user computer, it is much more efficient and inexpensive to simultaneously communicate notification messages to users. As an example, consider a situation in which a bus is carrying or picking up a plurality of passengers at the same bus stop. As the bus approaches the bus stop, a large number of notification messages may need to be simultaneously transmitted. Equipping the bus with the necessary equipment to place simultaneous cellular calls is usually expensive and can utilize a significant amount of valuable space on the bus.

Transmitting the travel data to a base station computer which then communicates notification messages to user computers, as taught by the present application, is much more efficient. In this regard, the cost associated with placing simultaneous calls can be significantly reduced, since only the base station (as opposed to each bus associated with the system) needs the capability of placing simultaneous calls. Furthermore, land-line networks (such as the publicly switched telephone network (PSTN)), which are often better suited for efficiently and inexpensively handling a plurality of simultaneous calls, may be used by the base station computer, whereas the cellular communication device disclosed in the '444 and '770 patents is limited to using the cellular network. As a result, by transmitting the travel data to a base station computer that establishes communication with the user computers, the efficiency and operation of an advance notification system can be dramatically improved, especially in applications that frequently need to communicate a relatively large number of notification messages in a relatively short time.

Since the '444 and '770 patents fail to disclose and/or suggest at least the features of pending claims 15-21, 23-26, 29, and 30 highlighted hereinabove, Applicant submits that the foregoing patents are inadequate to reject claims 15-21, 23-26, 29, and 30, as presently set forth, under 35 U.S.C. §102 and/or §103.

CONCLUSION

Applicant respectfully requests that the Board of Appeals reverse the Examiner's rejections of all pending claims 1-21 and 23-49 for the reasons indicated.

Respectfully submitted ,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

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APPENDIX TO THE APPEAL BRIEF UNDER 37 C.F.R. §1.192

The Appendix is incorporated into the foregoing Appeal Brief under 37 C.F.R. §1.192.

THE CLAIMS

1. A method for notifying a user in advance of an impending arrival of a vehicle at a vehicle stop, comprising the steps of:

monitoring travel of said vehicle;

forwarding travel data to a computer associated with said user; and

producing a message at said computer for said user indicative of an impending arrival of said vehicle at said vehicle stop before said vehicle reaches said vehicle stop, based upon said travel data.

2. The method of claim 1, further comprising the steps of:

monitoring a location of said vehicle and comparing said location to mapping data; and

initiating said message to said computer when said vehicle is at a predetermined location from said vehicle stop based upon said comparison.

3. The method of claim 1, wherein said message comprises a signal for a computer display.

4. The method of claim 1, wherein said message comprises an audible sound.

5. The method of claim 1, further comprising the step of permitting said user to preset a time period at said computer that determines when said message is produced, said time period corresponding to arrival of said vehicle at said vehicle stop.

6. The method of claim 1, further comprising the step of permitting said user to preset a distance at said computer that determines when said message is produced, said distance corresponding to arrival of said vehicle at said vehicle stop.

7. The method of claim 1, further comprising the step of permitting said user to preset a location of said vehicle on a map at said computer that determines when said message is produced.

8. The method of claim 1, further comprising the step of permitting said user to preset a particular vehicle stop that determines when said message is produced, based upon when said vehicle arrives at said particular stop.

9. The method of claim 1, further comprising the step of forwarding another message to a telephone associated with said user in addition to said message to said computer, said another message indicating impending arrival of said vehicle.

10. The method of claim 1, further comprising the step of providing in said message a vehicle location.

11. The method of claim 1, wherein said travel data is timing information.

12. The method of claim 1, wherein said travel data is distance information.

13. The method of claim 1, further comprising the steps of:

monitoring content of said vehicle; and

determining said vehicle stop based upon said content.

14. A system for notifying a user in advance of an impending arrival of a vehicle at a particular location, comprising:

means for monitoring travel of said vehicle;

means for forwarding travel data to a computer associated with said user; and

means for producing a message at said computer for said user indicative of said impending arrival of said vehicle at said particular location before said vehicle reaches said particular location, based upon said travel data.

15. A system for an advance notification system that notifies a user of an impending arrival of a vehicle at a particular location, comprising:

(a) a computer associated with said user, said computer for producing a message at said computer for said user indicative of said impending arrival of said vehicle at said particular location before said vehicle reaches said particular location;

(b) a vehicle control unit disposed on said vehicle, said vehicle control unit having:

(1) a vehicle travel monitoring means;
(2) a vehicle transmitter adapted to transmit travel data based upon said vehicle travel monitoring means;

(3) a vehicle processor controlling said vehicle travel monitoring means and said vehicle transmitter; and

(c) a base station control unit having:

(1) a receiver adapted to receive said travel data from said vehicle control unit; and
(2) a base station computer controlling said receiver, said base station computer for establishing a connection between said base station computer and said user computer and communicating said travel data.

16. The system of claim 15, wherein said base station computer further comprises: means for monitoring a location of said vehicle and comparing said location to mapping data; and

means for initiating said message to said user computer when said vehicle is at a predetermined location based upon said comparison.

17. The system of claim 15, wherein said message comprises a signal for a computer display.

18. The system of claim 15, wherein said message comprises an audible sound.

19. The system of claim 15, wherein said user computer further comprises a means for permitting said user to preset a time period at said user computer that determines when said message is produced, said time period corresponding to arrival of said vehicle at said particular location.

20. The system of claim 15, wherein said user computer further comprises a means for permitting said user to preset a distance at said user computer that determines when said message is produced, said distance corresponding to arrival of said vehicle at said particular location.

21. The system of claim 15, wherein said user computer further comprises a means for permitting said user to preset a location of said vehicle on a map at said user computer that determines when said message is produced.

23. The system of claim 15, wherein said message comprises a vehicle location.

24. The system of claim 15, wherein said travel data is timing information.

25. The system of claim 15, wherein said travel data is distance information.

26. The system of claim 15, wherein said vehicle control unit further comprises:
means for monitoring content of said vehicle; and
means for determining said particular location based upon said content.

27. The system of claim 14, wherein said means for monitoring includes a means for receiving data transmitted from said vehicle.

28. The system of claim 14, wherein said forwarding means transmits said travel data from a central location to a remote location through a communications network.

29. The system of claim 15, wherein said base station control unit further comprises:
a base station telephone interface controlled by said base station computer; and
a means for forwarding another message to a telephone associated with said user via said
base station telephone interface, said another message indicating said impending arrival of said
vehicle.

30. The system of claim 15, wherein said user computer further comprises a means for
permitting said user to preset said particular location that determines when said message is
produced.

31. A method for permitting specification of when advance notification will occur in an
advance notification system, the advance notification system for notifying a party of impending
arrival of a vehicle at a particular location, the advance notification system comprising (a) a party
communications device, (b) a system control situated remote from the vehicle and the party
communications device, the system control configured to monitor travel of the vehicle, and (c) a
system communications device associated with the system control, the method comprising the steps
of:

establishing a communications connection between said party communications device and
said system communications device;

communicating preference information over said communications connection from said
party communications device to said system communications device, said preference information
indicating a predefined proximity of said vehicle relative to said particular location when advance
notification is desired as said vehicle travels; and

configuring said system control to initiate another communications connection with said
party when said proximity of said vehicle to said particular location corresponds with said
preference information.

32. The method of claim 31, wherein said preference information is a time period.

33. The method of claim 31, wherein said preference information is a distance.

34. The method of claim 31, wherein said preference information is a specific location on the earth.

35. The method of claim 31, wherein said communications connection is a telephone connection.

36. The method of claim 31, wherein said communications connection is at least in part over the Internet.

37. A system for permitting specification of when advance notification will occur in an advance notification system, the advance notification system for notifying a party of impending arrival of a vehicle at a particular location, comprising:

means for monitoring travel of said vehicle;

means for receiving preference information indicating a predefined proximity of said vehicle relative to said particular location when advance notification is desired as said vehicle travels; and

means for communicating to said party when said proximity of said vehicle to said particular location corresponds with said preference information.

38. The system of claim 37, wherein said preference information is a time period.

39. The system of claim 37, wherein said preference information is a distance.

40. The system of claim 37, wherein said preference information is a specific location on the earth.

41. The system of claim 37, wherein said means for communicating is adapted to establish a communications connection at least in part over the public switched telephone network.

42. The system of claim 37, wherein said means for communicating is adapted to establish a communications connection at least in part over the Internet.

43. A system for permitting specification of when advance notification will occur in an advance notification system, the advance notification system for notifying a party of impending arrival of a vehicle at a particular location, comprising:

a communications device; and

a base station computer system configured to monitor travel of said vehicle, said base station computer system configured to receive preference information indicating a predefined proximity of said vehicle relative to said particular location when advance notification is desired as said vehicle travels, and said base station computer system configured to control said communications device to communicate to said party when said proximity of said vehicle to said particular location corresponds with said preference information.

44. The system of claim 43, wherein said preference information is a time period.

45. The system of claim 43, wherein said preference information is a distance.

46. The system of claim 43, wherein said preference information is a specific location on the earth.

47. The system of claim 43, wherein said communications device is a telephone interface.

48. The system of claim 43, wherein said communications device is adapted to establish a communications connection at least in part over the Internet.

49. The system of claim 43, wherein said base station computer system comprises:
a computer processor configured to execute software; and
a memory configured to store said software that is executed by said processor, said software comprising:

- logic configured to monitor travel of said vehicle;
- logic configured to receive preference information indicating a predefined proximity of said vehicle relative to said particular location when advance notification is desired as said vehicle travels; and
- logic configured to control said communications device to communicate said party when said proximity of said vehicle to said particular location corresponds with said preference information.